

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL SIMMONS, :
 :
Plaintiff, : REPORT & RECOMMENDATION
 :
-against- : 07 Civ. 3241 (RJH) (MHD)
 :
ASSISTANT COMMISSIONER MARK :
CRANSTON et al., :
 :
Defendants. :
-----X

TO THE HONORABLE RICHARD J. HOLWELL, U.S.D.J.:

By letter dated September 12, 2007, pro se plaintiff Paul Simmons seeks entry of a default against defendants Mark Cranston and Robert Cripps. The basis for this request is plaintiff's claim that these defendants failed to comply with an order by this court on August 27, 2007 that they serve and file a response to the complaint by September 10, 2007. That order was issued after we had noted that both defendants had been served on June 27, 2007, and that they had failed to answer or otherwise move with respect to the complaint.

The defendants in fact served their answer to the complaint on September 10, 2007 and then filed their pleading, in compliance with our directive. (See Order dated Sept. 14, 2007; Sept. 28, 2007 letter to the Court from Ass't Corp. Counsel Brian G. Maxey). Since they complied with our order, there was no default, and hence we

recommend that plaintiff's application for entry of a default be denied.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Richard J. Holwell, Room 1950, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e); Thomas v. Arn, 470 U.S. 140, 150-52 (1985); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

Dated: New York, New York
October 8, 2007



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been mailed today to:

Mr. Paul Simmons
241-06-10391
GRVC at Rikers Island
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